

# WIPO



WIPO/IP/IND/GE/07/15

ORIGINAL: English

DATE: October 16, 2007

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

E

## WIPO INTERNATIONAL CONFERENCE ON INTELLECTUAL PROPERTY AND THE CREATIVE INDUSTRIES

**Geneva, October 29 and 30, 2007**

THE BUSINESS OF CREATIVITY: INNOVATIVE BUSINESS MODELS;  
BEST PRACTICES

*Document\* prepared by Mr. David Sweeney, Senior Counsel,  
the Interactive Software Federation of Europe (ISFE)*

---

\* The views expressed in this document are those of the author, and not necessarily those of the WIPO Secretariat or its Member States.

WIPO Creative Industries Conference October 29, 30 2007

Theme Five

‘The Business of Creativity: Innovative Business Models; Best Practices’

Case Study 3 Interactive Online Games;

*‘Online Games and Virtual Worlds; Creative Diversity in Action’*

David Sweeney, Senior Counsel, ISFE

- *Slide ISFE Logo/DS*

## Introduction

It is indeed a privilege to speak here today near to the conclusion of an exciting and stimulating conference. As a former professional musician myself I know a little about the business of creativity and how difficult it can be when you are creative but not in possession of a successful business model. Anybody who has been a starving artist will know what I am talking about...

Today things are better and I am very happy to be part of a dynamic and creatively diverse business ...and also, this time, to get paid for doing so. That business is the videogame industry, or as we call it the interactive software industry, based, as we are, on software which is interactive.

My assignment today is a real challenge. I will try to summarise to you in the next fifteen minutes the vibrant and fast growing virtual world of online games. This is where cutting edge creativity meets the latest technology and also makes money in the process. First a few words about my sponsor...

What is ISFE?

So, what is ISFE? Here is what it says on our website:

*ISFE is the Interactive Software Federation of Europe represents the European interactive software industry which produces entertainment and educational software for use on personal computers, videogame consoles, portable devices and mobile phones. It is the fastest growing ‘content’ sector in Europe.*

Here, in fact, is just how quickly the videogame sector is growing....

- *Slide Showing Industry Growth - Graph (from ISFE?)*

What is a Videogame?

First for the lawyers in the audience (and I am not going to deal with legal issues, fascinating as they are in this whole area) we have tried to define a videogame as follows:

*'a computer program which contains audio and visual data that is used to create an interactive relationship with and/or between users of the program through the display of elements such as images, text and sounds, all of which are capable of independent copyright protection.'*

Quite a mouthful and, if you look, you will see that there is not much case law out there yet nor are there definitions on the statute books. That law that can be found is continually evolving

The constituent elements then are ...'software-based but also containing text, video and sometimes music all of which are capable of independent copyright protection' ...fine but what are videogames, really?

You could say that the videogame has developed rapidly in the thirty years since it started with the introduction first of small computer-based games, then larger 'arcade' games 'Space Invaders' 'Pacman' 'Donkey Kong', and the early development of specialized games for consoles (Atari, Sega and the Nintendo developed Gameboy were the pioneers here) all occurring during the 1970s and 1980s....when a lot of us were trying to get educated and ended up in the students union recreation club instead

The past two decades have seen the wide scale development of the industry itself and the mass production and distribution for retail sale of video games and educational content for use on personal computers, advanced games consoles, including portable devices, and mobile phones. Worldwide turnover is now well over 30 Million Euros each year. Games developers and publishers now work together to make available a wide array of creative content in increasingly diverse ways. Here are some of the more popular current and past examples

*\* Slide showing examples of titles World of Warcraft, Tony Hawk, Halo 3, Grand Theft Auto, Gran Turismo, FIFA, Lara Croft, SWAT Force, Legend of Zelda etc)*

I recently visited a European Game Development Studio and saw the prototypes of games that will be placed on the market late next year.

In lifelike full colour, three dimensions with a surround sound track, the games are a step into a whole new environment like none that has come before.

The designers that I saw working there were using as inspiration studies of human and animal bone structure and anatomy, classical architecture and art and were also creating their own music for those games in a dedicated recording studio.

Quoting *Wikipedia*, ‘modern video games contain a unique synthesis of [3D art](#), computer graphic effects, architecture, artificial intelligence, sound effects, dramatic performances, music, storytelling, and, most importantly, [interactivity](#)’.

Games that are developed in countries all over the world, licensed sold and distributed by companies in different countries are now enjoyed by gamers in still more countries, sometimes simultaneously.

Creative Diversity in Action.

This is where it starts to get really interesting

- *Slide World Of Warcraft Video from Vivendi Game/Blizzard Entertainment*

Online Game play; the Gateway to Virtual Reality

The interactive software industry embraced what in my opinion is the greatest development of our generation at an early stage. The Internet is a creative and business tool without parallel and this industry has a clear vested interest in the development of this great medium. Interactive software is increasingly delivered and enjoyed online and is also a rich and exciting source of user-created and culturally diverse content. The European Commission has rightly identified “digital convergence” as the main driver of change in the online sector today. This industry wishes to fully exploit the benefits of convergence both to maximize output and increase competitiveness but, above all, to be creative.

We feel that all of this can best be achieved by continuation of a liberal regulatory infrastructure aligned with strong international norms of intellectual property protection and enforcement.

Interactivity as already mentioned is the critical and unique feature of this sector and it is something which was fundamental to the industry right from that beginning thirty years ago. From the very outset, we have invited consumers to share an interactive experience.

However, even so, the level of interactivity in the industry has continued to grow steadily in line with the improved performance of digital technology.

The emergence within the past decade of online game play such as exemplified by the *World of Warcraft* game which now has around ten million subscribers worldwide.

The game is illustrated in this slide and as I will describe in detail in a couple of minutes has with other similar innovatory and virtual worlds meant a quantum leap not just in terms of interactivity but also in terms of technology and user-driven and user-created content.

The head-start enjoyed by an industry “born digital and global” thirty years ago has therefore resulted in a dynamic approach to business models, classification system and distribution methods.

Let’s now look at online games in a bit more detail

- *Online Games - Slide*

Online games are currently categorized as being of five different types:

1. *Casual games* – which are usually online or mobile versions of arcade, board or digital games and are generally made available free of charge and can be accompanied by advertising. These games are currently enjoying massive user growth.
2. *Advergemes* – online games aimed exclusively at promoting a particular product or message and therefore also made available free of charge.
3. *Network Games* - games played usually with a PC but now also via consoles such as the Playstation 3, the Xbox 360 and the newest arrival the Wii (including newer handheld devices such as the PSP) with online access.  
The most popular types of games can now be played in this way with online engagement usually occurring between a small number of players.
4. *Massively Multiplayer Online Role-Playing Games* (MMORPG) are considered the most innovative and revolutionary of all online games as they are continuous ('persistent') and can involve many thousands of players at the same time. It is around these games that virtual communities develop leading to creation of social structures and values, constant communication and virtual currencies and assets. '*World of Warcraft*' '*Everquest*' and '*Second Life*' are examples of such games and each now has millions of subscribers.
5. *Mobile games* - For the past decade games are also being increasingly developed for use on mobile phones and delivered either already installed on a phone or via direct download at a later time.

#### MMORPGs

Let's look at the fourth category in detail as it is here that arguable most innovation is now taking place. Massively Multiplayer Online Role-Playing Games or MMORPGs. *For short (!)*.

I read a truly amazing book last year '*Snow Crash*' by Neal Stephenson. As you may know, the book tells a story of when and how real and virtual worlds collide with millions of people online with separate identities and agendas. The story switches back and forward from real to virtual worlds with dazzling effect and paints a picture of how things just might be in the future.

Wait, a minute, let's read that again, '*a story of when real and virtual worlds collide with millions of people online with separate identities and agendas.*' This of course is

not the future. It is already happening, today, now. Not a bad description, I thought, of where things are going until I looked at the date of publication....1992!

So, Science Fiction becomes Science Fact. Just like it did after Jules Verne wrote his novels 'Around the World in Eight Days' and '20,000 Leagues Under the Sea'. 'Do Androids Dream Of Electric Sheep.' asked one of them, the novelist Philip K Dick and his futuristic and now clearly plausible vision was brilliantly realised by another, the Director Ridley Scott in 'Blade Runner'

When we look at online games our short list of prophets includes Professor Edward Castronova who in several books, most notably, 'Synthetic Worlds'<sup>†</sup> has categorised and predicted the growth of the online gaming/virtual world phenomenon from an economic point of view. Did you know that the online game sector has a virtual economy bigger than that of several countries?

Online games also afford unparalleled platforms for interaction among human beings, what Professor Castronova calls "avatar-mediated communication". The avatar being the term of art for a gamers' online persona.

Online gaming is today a major component of the highly creative internet-based communities that are thriving at the present time. The momentum being generated in the online games sector and driven by the efforts of games publishers and players alike is in part responsible for an explosion in culturally diverse and multinational content online. This diversity is self-sustaining and continually evolving.

Games, particularly those played online, are rightly seen as a new type of stage, a *hyper-stage*<sup>‡</sup> where players are invited to take on roles and perform acts. Inevitably, they contribute their personal idiosyncrasies, values, culture, etc to these roles and acts. The *Virtual Worlds* associated with online games are populated by communities engaging in international creativity and multi-lingual communication on a constant basis.

Arguably, the power of online games as providing unparalleled communication tools transcends existing languages. Online gamers have proved as creative as SMS buffs in designing tailor-made new e-mail syntax which only slightly resembles any existing language.

Unlike movies, videogames afford gamers a platform to share their own culture and language. Not only does this continuing creative process offer the best explanation of why videogames are so popular, it provides a ready made stage for cultural, creative and linguistic diversity in action.

---

Let's look at what goes on in a real life virtual world, 'World of Warcraft' in a bit more detail ....

\* *Slide/Video WoW*

How it works.

Software, as you would expect, needed at the start before anything happens.

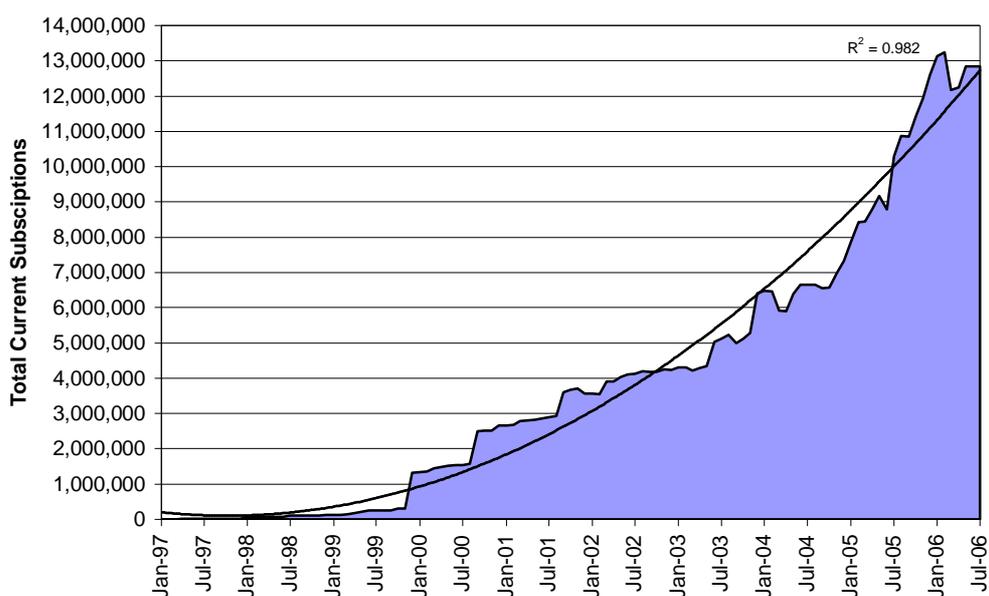
This can be delivered to the gamer either on or off-line. The gamer is then given a specific on-line identity called an avatar which remains the same no matter when or where in world the gamer logs on to play. The gamer then plays a monthly subscription to allow play continue. The game network itself is continually upgraded and also most on-line game publishers now deliver such things as expansion packs, add-ons, wallpaper, product demos and other proprietary content on line through various secure applications.

Any product purchased is the same product that is also available to consumers on fixed media at retail outlets.

*Discussion of the WoW/Online environment*

### The Business of Creativity

Let's get back to business. Online games also make money for their creators and increasingly for those who participate. Here's how Rand chart the growth of the MMOPPG sector alone in the past few years:



In general, online games have an impressive uptake –, the Organisation for Economic Cooperation and Development (‘OECD’), based on a Price Waterhouse Coopers report in 2004, estimates that their share of the overall interactive software market will grow from 4% in 2002 to 28% in 2008.

It is estimated that revenue from online games will triple in the next three years.

Here are the predicted turnover figures for the sector

\* Slide – Growth in Online Games Market

...and, as I said, online gamers can make money too

As you may know, virtual economies exist in these virtual worlds where gamers buy and sell virtual goods using virtual money. That virtual money is now being traded online on sites such as e-Bay and a fluctuating exchange rate relative to currencies such as the Euro, Yen and Dollar has been established. It is therefore no surprise that the national revenue services of certain countries have started to get interested and are asking the question whether the revenue derived from online game play can be classified as ‘income’.

Let’s go back to Professor Castronova writing way back in 2001 for a look at just how these games are developing economies of their own.

In March 1999, a small number of Californians discovered a new world called Norrath, populated by an exotic but industrious people. About 12,000 people call this place their permanent home, although some 60,000 are present there at any given time. The nominal hourly wage is about USD 3.42 per hour, and the labours of the people produce a GNP per capita somewhere between that of Russia and Bulgaria. A unit of Norrath's currency is traded on exchange markets at USD 0.0107, higher than the Yen and the Lira. The economy is characterized by extreme inequality, yet life there is quite attractive to many. The population is growing rapidly, swollen each day by hundreds of émigrés from various places around the globe, but especially the United States. Perhaps the most interesting thing about the new world is its location. Norrath is a virtual world that exists entirely on 40 computers in San Diego. Unlike many internet ventures, virtual worlds are making money -- with annual revenues expected to top USD 1.5 billion by 2004 -- and if network effects are as powerful here as they have been with other internet innovations, virtual worlds may soon become the primary venue for all online activity’.

Professor Castronova was speaking about the fictional planet of Norrath virtual world as constituted in the Everquest game. Most figures quoted by the Professor are now only a multiple of today’s reality – million populate these virtual worlds - though I think that the exchange rates have stayed relatively stable.

### A Responsible Industry?

Videogames have been getting a bad press lately. Whilst it is important to realise that games are increasingly an adult medium - the average of a gamer is around thirty years of age - protection of minors is paramount to this industry, Therefore it developed in 2003, in cooperation with parents, national regulators and the European Commission a self-regulatory rating system called *PEGI* (‘*Pan European Game Information*’). This

now applies in around 25 EU countries and by way of easily recognisable icons indicates to parents the appropriate age ratings for, and type of content contained in, games delivered on and off line.

Very recently the PEGI ethic was extended to online services which deliver games: all of these must be PEGI rated and conform to specific guidelines which protect children, respect privacy and also keep to strict advertising rules.

This is the *PEGI Online* initiative which was jointly funded by the European Union as part of its draft Internet Programme. Full details of both PEGI and PEGI Online can be found at this website [www.pegi.info](http://www.pegi.info)

## Conclusion

There are many more issues I would have loved to speak about today. Chinese online gold farms for example where robots allegedly work 24/7 at creating virtual wealth.

(Another book worth reading in this area is Julian Dibbell's '*Play Money or How I Quit my Day Job and Made Millions Trading Virtual Loot*' published last year).

Hopefully however I have more than scratched the surface of this fascinating new and creative business

As we look at ways to curb our carbon footprint in the future I think there is no doubt that we will be interacting online even more than we do now and maybe even attending meetings such as this one not physically but virtually.

How soon before we see this stunning auditorium reproduced online in stunning 3D and our avatars make their way down its virtual aisles to interact and debate the finer points of Intellectual Property without leaving our desks at the office or better still, back home? However as I look around me I think that is one development that should wait for a while longer.

Virtual worlds and the social and business opportunities they provide are clearly 'the way of the future' and like many of humanities greatest inventions they find their origin in play.

Thank you

David Sweeney  
October 26 2007  
Brussels

## Bibliography

Edward Castronova '*Synthetic Worlds. The Business and Culture of Online Games.*'  
University of Chicago Press (2005)

Edward Castronova '*Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier*' CESifo Working Paper (2001)

Julian Dibbel '*Play Money or How I Quit my Day Job and Made Millions Trading Virtual Loot*' Basic Books (2006)

OECD, "*Digital Broadband Content: The Online Computer and Video Game Industry*", (2004)

[End of document]